

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION    )  
  
BEFORE THE INDIANA  
COMMISSIONER OF INSURANCE  
  
CAUSE NO: IDOI MC05-1005-025

IN THE MATTER OF:                )  
THE LINCOLN NATIONAL LIFE        )  
INSURANCE COMPANY                )  
                                  )  
MARKET CONDUCT                    )  
EXAMINATION                        )

SETTLEMENT AGREEMENT  
AND ORDER

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This is a settlement agreement (the “Settlement Agreement and Order”) between The Lincoln National Insurance Company (“LNL”) and the Indiana Department of Insurance (the “Primary Regulatory Negotiator”) for and on behalf of each of the Insurance Regulators adopting this Settlement Agreement and Order.

**I. DEFINITIONS**

As used in this Settlement Agreement and Order, the following terms have the following meanings:

A. Examination Team and Examination Team States: California, Ohio, Florida, North Carolina, Iowa, and Indiana, and the Insurance Regulators for those states.

B. Impacted State: A state identified in Exhibit I of this Agreement, which

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includes all states known to the Primary Regulatory Negotiator in which policies covered by this Settlement Agreement and Order are currently in-force or in which claims were paid prior to the Settlement Approval Date. If an additional state is identified pursuant to the ongoing review referenced in Section IV of this Settlement Agreement and Order,

that state shall be deemed an Impacted State.

C. In-force: When used in conjunction with an insurance policy, in force means that as of the date this Settlement Agreement and Order is signed, the policy is premium paying, is fully paid-up, or otherwise continues to provide coverage pursuant to a contractual or statutory non-forfeiture option, including reduced paid up or extended term insurance.

D. Insurance Regulator: The individual or agency having primary responsibility for the regulation of the business of insurance for a particular state. The term Insurance Regulator shall be understood to be co-extensive with the state represented by the Insurance Regulator.

E. Life Insurance: The term life insurance refers to life insurance sold by LNL under the label ordinary insurance.

F. The Lincoln National Life Insurance Company: The term The Lincoln National Life Insurance Company or LNL shall be liberally construed to include The Lincoln National Life Insurance Company, any company acquired or business assumption reinsured by The Lincoln National Life Insurance Company, and any present or former officer, director, manager, employee, agent, representative, or attorney for these companies.

G. Participating State: An Impacted State that executes the Consent Order or other document acceptable to LNL that is intended for the purposes of adopting and becoming a party to the Settlement Agreement and Order.

H. Settlement Approval Date: The date the Settlement Agreement and Order is signed by the Indiana Insurance Commissioner.

## **II. BACKGROUND AND RECITALS**

A. In January, 2003, the Indiana Department of Insurance, working with the Insurance Regulators for the States of California, Ohio, Florida, North Carolina, and Iowa ("Primary Team Examiners"), began a Multi-State examination into market conduct practices of LNL as of January, 2003 (the "Examination"). The Examination, which included industrial life insurance, monthly debit ordinary (MDO), burial, monthly intermediate ordinary, home service, and ordinary insurance, was instituted to determine if the underwriting of the policies was impacted by the race of the applicant. However, LNL never in its corporate history wrote any of these products except ordinary life insurance.

B. Details regarding the Examination are found in the ACTUARIAL REPORT: RACE BASED PRICING ACTIVITIES WITH RESPECT TO THE LIFE INSURANCE BUSINESS OF LINCOLN NATIONAL LIFE INSURANCE COMPANY as of January 20, 2004 (the "Report").

C. Members of the National Association of Insurance Commissioners ("NAIC") agreed that the Primary Regulators would investigate the matters that were the subject of the Examination and would, if appropriate, seek to obtain a multi-state settlement with respect to these regulatory issues.

D. The Indiana Department of Insurance acted as the Primary Regulatory

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Negotiator on behalf of the Primary Regulators and the other members of the NAIC. After extensive investigation and negotiation, LNL and the Primary Regulatory Negotiator agreed to enter into this Settlement Agreement and Order that provides benefits for current and former policyholders and others whose policies or benefits may

have been affected by underwriting practices that included race as a consideration. Each member of the NAIC with affected policies in their jurisdiction will have the opportunity to accept this Settlement Agreement and Order.

E. By the adoption of this Settlement Agreement and Order, LNL and the undersigned Insurance Regulator have agreed to resolve all issues addressed in the Report.

F. The parties to this Settlement Agreement and Order understand and acknowledge that LNL does not admit to violating the regulatory laws of any state, and LNL is foregoing its right to regulatory process in exchange for the releases granted by this Settlement Agreement and Order.

### **III. CONDITIONS OF SETTLEMENT AND IMPLEMENTATION OF BENEFITS**

A. This Settlement Agreement and Order was negotiated in an effort to conclude with finality all regulatory allegations involving the impact of race on life insurance underwriting, sales, pricing, or policy benefits on policies that were issued, assumed, acquired, or administered by LNL prior to the date of this Settlement Agreement and Order.

### **IV. BENEFITS TO POLICYHOLDERS**

#### **A. Policies Entitled to Benefits**

1. Policies covered by this Settlement Agreement and Order are those policies in the plan codes identified in the Report dated January 20, 2004, at pages eight to sixteen (8-16) as, LNL Policies Issued Prior to May 1949; LNL Policies Issued May 1949 Through September 1963; Policies Issued After September 1963; and Business Acquired by LNL.

2. It is the intention of LNL and the states adopting this Settlement Agreement and Order that additional policies entitled to benefits may be identified by ongoing review by LNL and the Indiana Department of Insurance, including due diligence efforts required by the Report or follow-up compliance examinations pursuant to this Settlement Agreement and Order. In the event additional policies are identified, the parties agree that those policies will be entitled to the same policyholder benefits provided for in this Settlement Agreement and Order.

**B. Benefits**

1. LNL agrees to pay restitution in the amount of \$247,962 plus compound interest at 6.5% accrued from January 1, 2005 to December 31, 2005 to all active and inactive policyholders or their beneficiaries.

2. For all policies that are active or inactive as of the Settlement Approval Date, LNL will: (a) if an insured is located, pay the insured one hundred percent (100%) of proceeds, (overpayment plus 6.5% compound interest); (b) if an insured is dead or cannot be located, pay the identified beneficiaries one hundred percent (100%) of proceeds in equal shares; (c) if a beneficiary could not be found but is subsequently located, pay the beneficiary an equal share.

3. If the policy plan code is in the search records, and if the death certificate indicates the insured's race is African American, Black, Negro or Colored, the restitution payment will be provided.

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**V. NOTICE AND CLAIMS PROCEDURES**

**A. Notice of Regulatory Settlement Agreement**

1. Notice to all policyholders and beneficiaries impacted by the Settlement Agreement and Order will be provided by direct first class mail to the last known address. In the event direct mail is returned as undeliverable, LNL will use internet and city directory searches in an effort to locate the policyholder or beneficiary.

2. The form and content of the notice to policyholders will be mutually agreed upon by LNL and the Indiana Department of Insurance. The notice will include: (a) background of the regulatory investigation; (b) description of the Settlement Agreement and Order and the benefits available; (c) description of claims procedure; and (d) toll-free telephone number and address for the purposes of questions about the Settlement Agreement and Order and obtaining claim forms.

**B. Claim Procedure**

1. Policyholders and beneficiaries eligible for benefits pursuant to this Settlement Agreement and Order will be paid from search records maintained by LNL. These policyholders or beneficiaries will not be required to file a claim form. LNL will make payment to eligible policyholders and beneficiaries on an ongoing basis.

2. Policyholders and beneficiaries eligible for benefits pursuant to Section IV will have 180 days from date of first notice to make a claim and present evidence to the designated administrator. The requirement of submitting a claim form applies only to policyholders and beneficiaries entitled to benefits for whom the eligibility and

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identification cannot be fully determined from company records.

3. The form and content of the claims forms will be mutually agreed upon by LNL and the Indiana Department of Insurance prior to implementation of the Settlement Agreement and Order.

### **C. Due Diligence**

1. LNL will use reasonable efforts to use the available computer and other databases to identify and locate persons entitled to overpayment benefits pursuant to the Settlement Agreement and Order.

2. In the event that LNL has an address for a policyholder or beneficiary but knows that address to be incorrect, LNL shall use other reasonable efforts to locate the policyholder or beneficiary.

3. In the event of returned mail with a forwarding address indicated by the Post Office, LNL will re-mail the notice or payment to the forwarding address indicated by the Post Office and will update LNL's computer databases as appropriate.

### **VI. CONTRIBUTION TO CHARITY**

LNL will make charitable contribution(s) to suitable organizations(s) engaged in addressing African American educational issues. The total of the contribution(s) will be \$225,000. The contribution(s) shall be made to organization(s) selected by the Primary Regulatory Negotiator. The contribution(s) shall be payable within one year of the Settlement Approval Date.

### **VII. REGULATORY RESOLUTION AND RELEASE**

This Settlement Agreement and Order is intended to release with finality all regulatory action of any kind with respect to the matters addressed by the Report or this Settlement Agreement and Order.

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With respect to all matters addressed by the Report or this Settlement Agreement and Order, the States executing a Consent Order, release and forever discharge LNL and its corporate parents from all civil, administrative, criminal, or quasi-

criminal causes, actions, claims, damages, fines, sanctions, losses, demands, or other liability that the States could pursue or seek based upon alleged distinctions in the terms or benefits of insurance policies based upon the race of the insured where such liability arises under the insurance and anti-discrimination laws and regulations of each state related or applicable to the marketing, solicitation, application, underwriting, benefit payment, acceptance, sale, purchase, operation, retention, or administration of all life or accident insurance policies sold, issued, assumed or administered by LNL or its acquired companies prior to the date this Settlement Agreement and Order is executed.

#### **VIII. ADOPTION OF REGULATORY SETTLEMENT AGREEMENT**

Upon execution by an Insurance Regulator of the Consent Order (attached Exhibit II) or other document intended for that purpose and in a form acceptable to LNL, the Insurance Regulator and the state he or she represents shall be deemed a party to this Settlement Agreement.

#### **IX. CERTIFICATION OF COMPLIANCE**

At the first anniversary of the Settlement Approval Date, LNL will provide a certification of compliance with the Settlement as follows: (1) a certification that procedures were implemented and all claims on policies that were subject to automatic policy payment were paid in accordance with the Settlement no later than November 1, 2005 and (2) a certification as to the number of policies, the amount of additional

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benefits, and the efforts that were made in connection with these payments.

#### **X. GENERAL MATTERS AND RESERVATIONS**

A. By execution of the Settlement Agreement and Order, LNL does not intend to release any claim against any insurer for any cost or expense hereunder.



B. The Primary Regulatory Negotiator represents that it is authorized to negotiate this Settlement Agreement and Order on behalf of the State of Indiana and the Insurance Regulators of each of the other Impacted States. The Primary Regulatory Negotiator acknowledges that LNL is entering this Settlement Agreement and Order in reliance on the fact that the Primary Regulatory Negotiator is authorized to negotiate on behalf of the Insurance Regulators of each of the Impacted States.

C. The signatory for LNL represents that he or she is authorized to enter into this Settlement Agreement on behalf of LNL.

D. This Settlement Agreement and Order, with its exhibits, sets forth the entire agreement among the parties with respect to its subject matter, and it may not be altered or modified except by written instruction executed by LNL and by the Primary Regulatory Negotiator. The parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Settlement Agreement exist among or between them which alters or affects the terms described herein.

E. Any action or proceeding to enforce the provisions of this Settlement Agreement and Order brought by any Participating State shall be governed by the laws and regulations of such Participating State. In all other respects, this Settlement Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Indiana.

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F. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by the Settlement Agreement or by order of court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The

last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday.

G. Neither this Settlement Agreement, nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of LNL or as a waiver by LNL of any applicable defense.

H. LNL does not admit violation of any applicable provision of any state insurance code.

I. Except for the provision or payment of benefits (which shall be deemed supplemental benefits under the applicable life insurance or accident policies), neither this Settlement Agreement nor any of the benefits offered under it shall be interpreted to alter in any way the contractual terms of any Policy or to constitute a novation of any insurance policy.

J. The Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Settlement Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Settlement Agreement.

K. LNL enters into this Settlement Agreement with the Indiana Department of Insurance acting as Primary Regulatory Negotiator. The terms of this Settlement Agreement shall be binding on LNL, the Primary Regulatory Negotiator, and on the Insurance Regulator of any state that adopts the Settlement Agreement and Order.

L. The intent of the Parties is that this Settlement Agreement shall be liberally construed to effectuate its remedial purpose.

## XI. ORDER

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** by the

Commissioner of Insurance:

1. This Settlement Agreement resolves claims of race based pricing practices by LNL.
2. As a result of this Settlement Agreement and Order, LNL shall pay restitution to policyholders or beneficiaries and make contributions to acceptable charitable institutions selected by the Indiana Commissioner of Insurance
3. LNL shall immediately initiate compliance with all terms and conditions of this Settlement Agreement and Order.

**ALL OF WHICH IS ORDERED THIS** 4 **DAY OF OCTOBER, 2005**


  
James Atterholt, Commissioner  
Indiana Department of Insurance

**AGREED TO BY AND ON BEHALF OF THE INDIANA DEPARTMENT OF INSURANCE**

By:   
James Atterholt, Commissioner  
Indiana Department of Insurance

Date: 10/4/05

**AGREED TO BY AND ON BEHALF OF THE LINCOLN NATIONAL LIFE INSURANCE COMPANY**

By:   
Steve Rahn, Vice President & Associate General Counsel  
The Lincoln National Life Insurance Company

Date: 10/6/05

Exhibit 1

INACTIVE POLICIES BY STATE

	<u>Issue State</u>	<u>Policy Count</u>	<u>Amount Owed with Interest through 12/31/05</u>
1	Alabama	1	\$ 594.53
2	California	20	\$ 29,122.84
3	Colorado	3	\$ 2,052.65
4	Connecticut	1	\$ 3,987.75
5	Florida	3	\$ 3,273.03
6	Georgia	1	\$ 890.98
7	Iowa	3	\$ 8,432.27
8	Illinois	4	\$ 6,480.75
9	Indiana	8	\$ 10,303.39
10	Kentucky	1	\$ 1,656.06
11	Louisiana	4	\$ 4,896.81
12	Maryland	53	\$ 57,543.83
13	Michigan	4	\$ 3,050.88
14	Minnesota	3	\$ 3,710.28
15	Missouri	5	\$ 4,966.53
16	North Carolina	6	\$ 3,859.86
17	Nebraska	3	\$ 2,396.18
18	New Jersey	1	\$ 414.12
19	New Mexico	1	\$ 2,199.53
20	Ohio	11	\$ 11,338.45
21	Pennsylvania	11	\$ 14,380.11
22	Texas	14	\$ 11,072.93
23	Virginia	5	\$ 9,436.78
24	Washington	8	\$ 21,063.62
25	Wisconsin	1	\$ 323.98
	<b>TOTAL</b>	<u>175</u>	<u>\$ 217,448.14</u>

# Exhibit 1

## ACTIVE POLICIES BY STATE

	<u>Issue State</u>	<u>Policy Count</u>	Amount Owed with Interest through <u>12/31/05</u>
1	California	7	\$6,493.49
2	Florida	1	\$3,692.12
3	Georgia	1	\$906.60
4	Illinois	4	\$3,581.35
5	Louisiana	2	\$826.70
6	Massachusetts	2	\$2,325.34
7	Maryland	20	\$18,660.35
8	Missouri	1	\$1,056.84
9	North Carolina	1	\$853.09
10	New Jersey	1	\$264.79
11	Ohio	4	\$4,466.71
12	Pennsylvania	1	\$489.06
13	Texas	1	\$575.90
14	Virginia	2	\$758.90
15	Washington	<u>2</u>	<u>\$1,680.59</u>
	TOTAL	<u>50</u>	<u>\$46,631.83</u>